

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Fiber Link, L.L.C.
(U-6028-C) for Modification of its Certificate of
Public Convenience and Necessity ("CPCN") to
Review Proponent's Environmental Assessment
for Compliance with the California
Environmental Quality Act ("CEQA").

Application 99-08-021
(Filed August 10, 1999)

ORDER EXTENDING STATUTORY DEADLINE

Pub. Util. Code § 1701.2(d) provides that adjudicatory cases shall be resolved within 12 months of initiation unless the Commission makes findings why that deadline cannot be met and issues an order extending the deadline.

Application (A.) 99-08-021 was filed on August 10, 1999. An Interim Opinion was issued on January 6, 2000 (Decision (D.) 00-01-022) granting the relief requested. However, the decision also directed that the application remain open pending a Phase II investigation of whether penalties should apply to applicant's failure to obtain environmental approval prior to start of construction.

Phase II of this proceeding was recategorized as an adjudicatory matter in a Scoping Memo issued on March 9, 2000. The recategorization was never confirmed by the Commission. If the recategorization of Phase II was applicable, even though not confirmed by the Commission, then the statutory deadline for completing Phase II would have been March 8, 2001.

On June 22, 2000, applicant in this proceeding requested and was granted a stay of proceeding until August 4, 2000, in order to explore settlement. Settlement discussions were unsuccessful, and at a prehearing conference on August 4, hearings were rescheduled for November 28-December 1, 2000. On September 30, 2000, applicant requested a further postponement because of a scheduling conflict. The hearing was rescheduled for January 8-12, 2001, with an admonition that no further extensions would be granted.

Hearings were conducted on January 8-12, 2001, and final briefs were filed on March 26, 2001, at which time the matter was deemed submitted for resolution. A proposed final decision in the Phase II proceeding was issued on May 18, 2001. However, the proposed decision was re-issued as a Presiding Officer's Decision on June 13, 2001, on the basis that, arguably, Phase II of the proceeding should have been deemed to be an adjudicatory matter based on the Scoping Memo of March 9, 2000.

Assuming that Phase II of the proceeding was properly deemed to be adjudicatory in the Scoping Memo of March 9, 2000, the 12-month deadline for resolving that phase of the proceeding was March 8, 2001. That deadline was not met, primarily because of a stay in the proceeding requested by applicant to explore settlement.

Because of the uncertainty of the categorization process in this case, the Commission deemed it prudent to extend the statutory deadline for final resolution of the application to ensure that no violation of Pub. Util. Code § 1701.2(d) occurred. In D.01-06-075, issued on June 28, 2001, the Commission extended the deadline to October 11, 2001. We stated that if a final decision had not been issued by that time, a further order extending statutory deadline would issue.

While a Presiding Officer's Decision in Phase II has been released, a final decision has not been issued because the Commission is considering an alternative resolution of this matter. Accordingly, we deem it prudent to extend the statutory deadline from October 11, 2001, to October 11, 2002.

Under Rule 77.7(f)(4) of the Rules of Practice and Procedure, the Commission may reduce or waive the period for public review and comment of draft decisions extending the deadline for resolving adjudicatory proceedings. Accordingly, pursuant to Rule 77.7(f)(4), the otherwise applicable § 1701.2(d) statutory deadline for public review and comment is being waived.

Findings of Fact

1. This proceeding was initiated on August 10, 1999, as a ratesetting proceeding.
2. On January 6, 2000, D.00-01-022 granted the relief requested but initiated a Phase II proceeding to investigate and determine whether penalties were appropriate.
3. By Scoping Memo dated March 9, 2000, Phase II of the proceeding was recategorized as adjudicatory.
4. Based upon the 12-month statutory deadline, this proceeding should have been resolved on or before March 8, 2001, unless that date was extended.
5. In D.01-06-075, the statutory deadline was extended to October 11, 2001.
6. Phase II of this proceeding was deemed submitted on March 26, 2001, and a Presiding Officer's Decision was circulated on June 13, 2001.
7. A final decision in Phase II of this proceeding has not been issued because the Commission is considering an alternative resolution of the case.
8. A final decision in Phase II is to be issued on or before October 11, 2002.

Conclusion of Law

The 12-month deadline imposed by Pub. Util. Code § 1701.2(d) should be extended until October 11, 2002.

O R D E R

IT IS ORDERED that the 12-month statutory deadline in this proceeding is extended until October 11, 2002.

This order is effective today.

Dated _____, at San Francisco, California.